

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/09/2003

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THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN

W.P.No.11266 of 2003

and W.P.Nos. 11845, 13146, 14986, 15243, 15257, 19796,
19839 and 20423 of 2003

and

W.P.M.P.Nos.14137, 14868, 16501, 25655, 18763, 19134, 19153, 24755,
24801 and 25466 of 2003

W.P.No.11266 of 2003:

Dr.K.P.Manimaran ... Petitioner

-Vs-

1. The State of Tamil Nadu,
rep. by its Secretary to Govt.,
Health and Family Welfare Dept.,
Fort St.George,
Chennai-9.

2. The Director of Medical Education,
Kilpauk, Chennai.

3. The Secretary,
Postgraduate Degree/Diploma Selection
Committee, Director of Medical Education,
162, E.V.R.Periyar High Road,
Kilpauk, Chennai-10. ... Respondents

Writ petition filed under Article 226 of the Constitution of
India for the issue of a writ of Certiorarified Mandamus as stated therein.

For petitioner: Mr.R.Krishnamoorthy,
Sr.counsel for Mr.U.M.Ravichandran
in W.P.No.15257 of 2003

Mr.V.K.Muthuswamy, Sr.counsel for Mr.R.Santhanam in
W.P.No.11266 of 2003

Mr.K.M.Vijayan, Sr.counsel for M/s.La Law for petr. in
W.P.No.20423 of 2003

Mr.U.M.Ravichandran in W.P.Nos.11845/2003, 13146/2003
14986 of 2003, 15243 of 2003
and 19839 of 2003

Mr.K.Raja in W.P.No.19796 of 2003

For respondents: Mr.V.R.Rajasekaran, Spl.G.P.(Edn.)

:ORDER

I am of the view that it will be appropriate to begin the judgment with the following observation made by R.C.Lahoti,J. in STATE OF M. P. v. GOPAL D. TIRTHANI (2003) 9 ILD 13 (SC):-

" Imparting instruction and giving education was philanthropy - a pious duty - in the past, and later a service. In recent times it has developed into a business and now it stands recognised as an industry. A sizeable amount of litigation centres around medical education. The national wealth of available seats is scarce while the aspirants, desirous of sharing such wealth, are numerous. Every attempt at laying down criteria for choosing the more deserving out of the several aspirants is subjected to challenge before the Constitutional Courts of the country."

2. The admission to professional courses is an annual feature and equally, challenge to the admission in most of the courses, particularly the medical courses and more particularly in P.G. medical courses has become an annual feature, with the result, almost every year several writ petitions are filed on the file of this Court challenging the mode of admission, and several clauses contained in the prospectus issued by the authorities are challenged. Though this Court has upheld some of the rules and struck down some other rules, I find that there is a constant tinkering of the clauses contained in the prospectus issued for each year leading to great uncertainty in each year's admission in professional courses. I am of the view, it will be better if a consistent policy is adopted by the State at least for a minimum period of five years, whatever may be the provocation for amendment of the clauses contained in the prospectus to avoid uncertainty in admissions.

3. The clauses under challenge in the above writ petitions are clauses-21 and 23 of the prospectus issued for Postgraduate Degree/ Diploma/5 year M.Ch. (Neuro Surgery) Courses for the academic year 2003-20 04 and the clauses read as under:-

" Clause-21:- Candidates who are undergoing a Postgraduate Diploma in any discipline are not eligible to apply for any other Diploma course. However those who are completing their Diploma courses on or before 27.04.2003 can apply for Postgraduate Degree in the concerned discipline only, provided they produce certificate from the Head of the Institution where they are undergoing the Diploma course to the effect that they will be completing the course on or before 27.04.2003.

Clause-23:- Candidates who have already completed or acquired a Postgraduate Diploma course in any discipline are eligible to apply for Postgraduate Degree course only in the concerned discipline and are not eligible for any other Postgraduate Diploma/Degree courses."

4. The validity of clause I(9) of General Instructions contained in the prospectus for the academic year 1997-98, which is similar to clause-23, was subject matter of consideration of this Court in a batch of writ petitions in W.P.No.1741 of 1997, etc. and the clause which was subject matter of consideration in those writ petitions stood as under:

" Clause-I(9):- A candidate who has already acquired a Postgraduate Diploma course in any one discipline is eligible to apply for Postgraduate Degree course in that discipline during 97-98".

5. The validity of the clause-I(9) of the General Instructions was considered by Mr.S.S.Subramani,J. in W.P.No.1741 of 1997,etc. batch and by judgment dated 9.9.1997, learned Judge allowed the writ petitions on the ground that the clause was violative of Article 14 of the Constitution of India. Learned Judge held that there should be no discrimination between one person and another if, as regards the subject matter, their position is the same.

6. The present clause-23 has been introduced to get over the lacuna pointed by Mr.S.S.Subramani,J. in the unreported decision, cited supra, providing that it would apply not only to the candidates who already appeared for postgraduate diploma course in any discipline, but also to the candidates who have completed the postgraduate diploma course in any

discipline. The further addition in the present clause-23 is that candidates who have already completed or acquired a postgraduate diploma course in one discipline are not eligible for any other postgraduate diploma/degree course.

7. Mr.R.Krishnamoorthy, learned senior counsel appearing for the petitioner in W.P.No.15257 of 2003 submitted that the minimum prescribed educational qualifications should alone be the criteria for admission and the diploma qualification is not necessary to apply for postgraduate degree course. Learned senior counsel after referring to clause-16(b) of the prospectus submitted that if a candidate secures postgraduate diploma in one discipline, the duration of postgraduate degree course is two years in the same speciality and three years in the case of other speciality. Learned senior counsel submitted that on the basis of clauses-13 and 16 of the prospectus, the petitioners are eligible to apply for the postgraduate degree course in any discipline and clause-23 is arbitrary and unreasonable as the merit which is the sole criterion for admission is sacrificed by the operation of clause-23 of the prospectus. Learned senior counsel also referred to clause-28 of the prospectus and submitted that in the counselling the admission is made on the basis of merit and under the same clause-28, it is open to the candidates to choose any of the discipline and the college available at the time of counselling and if clause-23 is applied in strict sense, the merit which is the sole basis for admission is given a go-by and the person with lesser merit than a candidate with higher merit would gain

admission. Learned senior counsel also referred to the Annexure-III, "Tentative Seat Matrix" both for degree course and diploma course and submitted that there are many diploma courses for which there are no corresponding postgraduate degree courses and similarly, there are many postgraduate degree courses for which there are no corresponding postgraduate diploma courses. Learned senior counsel submitted that the additional qualification of securing a diploma has become a disqualification and the knowledge bank cannot be regarded as a disqualification. Learned senior counsel submitted that the eligibility for admission in the postgraduate degree courses is the marks obtained in the common entrance examination and if there is any dilution of quality and if the merit is given a go-by by the operation of clause-23 of the prospectus, it will be violative of Article-14 of the Constitution of India. Learned senior counsel also submitted that there are two sets of procedure for admission and in so far as candidates coming under All India Entrance Examinations are concerned, the bar prescribed in clause-23 of the prospectus issued by the respondents does not operate against them, but it would operate only against the candidates seeking admission on the basis of prospectus for the year 2003-2004 issued by the respondents. Learned senior counsel also referred to the prospectus issued by the Manipal Academy of Higher Education for the year 2002 and submitted that the prospectus issued by Manipal Academy of Higher Education provides for grant of additional marks for the person having qualification of P.G. Diploma, but there is no such provision awarding additional marks or weightage found in the prospectus in question. Mr.R. Krishnamoorthy, learned senior counsel submitted that more than 6,000 candidates have taken up common entrance examinations and according to him, M.D. Pediatrics course contains a total number of 24 seats and out of 24 seats, six seats are allotted to All India Category and out of remaining seats, five seats are available under open category and a candidate with P.G. Diploma in Pediatrics, even if he has secured third rank, he would not be eligible, but a candidate with lesser marks would become eligible for admission and by this process, the merit of the candidates is completely overlooked. He therefore submitted that there is unreasonableness and the merit is given a go-by by operation of clause-23 of the prospectus. Learned senior counsel, in support of his submission, relied upon the unreported decision of this Court in W. P.No.1741 of 1997, etc. batch (Dr.K.Chinnusamy and others v. State of Tamil Nadu rep. by Secretary to Govt., Health & Family Welfare Department, Secretariat, Chennai-9 and others) dated 9.9.1997, the decision of the Supreme Court in DINESH KUMAR v. MOTILAL NEHRU MEDICAL COLLEGE (1987 (4) SCC 459), the decision of the Andhra Pradesh High Court in V.SHAMSUNDER RAO v. STATE (AIR 1982 AP 405) and the decision of the Punjab and Haryana High Court in TJINDER SINGH SIDHU v. STATE (AIR 1992 P & H 119).

8. Mr.V.K.Muthusamy, learned senior counsel appearing for some of the petitioners submitted that clause-23 should be construed with reference to other clauses found in the prospectus and clause-23 cannot be construed as a prohibitory clause. His submission is that harmonious construction of various clauses should be given and if all the clauses are read together applying the principle of contextual interpretation, the intention is clear that there is an implied permission and the clause 14 or 16 or 28 would operate subject to clause-23. He also submitted that acquisition

of diploma is not treated as a speciality course and once eligibility criterion is satisfied, clause-23 cannot be put against the petitioners. He also referred to clause-59 and submitted that in so far as 25 percentage of seats allotted for All India candidates are concerned, the prohibition does not apply and there is discrimination and equals are treated unequally. He also submitted that clause-28 is not controlled by clause-23 and the effect of clause-23 should be read so that it cannot override other clauses which prescribe eligibility criteria for admission.

9. Mr.K.M.Vijayan, learned senior counsel appearing for some other petitioners submitted that at the time of eligibility of candidates, no classification is made and at the time of selection also, no classification is made, but only at the time of admission, the classification is made and since there is discrimination at the time of admission, the State Government has no power to make such a classification at the time of admission. He also submitted that in the matter of selection, the merit is given a go-by and the respondents cannot prevent a student from seeking admission to a separate discipline. He also submitted that the clause is invalid in view of the provisions of the Medical Council of India Regulations framed under section 33 of the Medical Council Act. His further submission is that after common entrance examinations, there can be no scope to prefer some of the candidates and no further classification is possible after common entrance examinations. His further submission is that clause-23 is not a separate clause and it must be construed in the light of other clauses and the prohibition imposed in clause-23 is violative of Article-14 of the Constitution of India.

10. Mr.Raja and Mr.Sundar, learned counsel who are appearing for other petitioners also advanced arguments and they referred to clause-28 and the Medical Council of India Postgraduate Medical Education Regulations and submitted that it is not open to the State Government to select a candidate not on the basis of merit and deny admission on the ground that candidate has earlier secured postgraduate diploma course.

11. Learned Special Government Pleader (Education), on the other hand, submitted that the petitioners are not having any fundamental right to admission or to pursue higher education. He referred to the decisions of the Supreme Court in UNNIKRIISHNAN,J.P. v. STATE OF A.P. (AIR 1993 SC 2178) and T.M.A. PAI FOUNDATION & ORS. v. STATE OF KARNATAKA (JT 1993(1) SC 474) and submitted that the petitioners have no vested right or statutory right to pursue higher education and it is not open to them to claim admission as a matter of right. Learned counsel submitted that the right to seek admission is limited subject to the compliance of certain basic criteria and they have no right to admission, but they have only a right to be considered for admission. He also submitted that the Government run educational institutions and they have the power to regulate admission of candidates and clause-23 is a regulatory clause and the burden is on the petitioners to prove that the clause is violative of the provisions of the Constitution and the petitioners have not elaborated or proved that clause-23 is violative of any of the provisions of the Constitution and clause-23 has been introduced only with the object that if a person has already secured a postgraduate diploma in one discipline, he must pursue the postgraduate degree

course in the same discipline and if he is allowed to branch off to another discipline, it would result in a situation that he may not be a specialist in two branches. Learned counsel submitted that if there are candidates with two specialties, then, it would affect the rights of other candidates who have not even secured postgraduate diploma or postgraduate degree and clause-23 is not a prohibitory clause and only regulates the mode of admission permitting candidates who have secured postgraduate diploma to pursue postgraduate degree course in the same discipline. He submitted that the candidates with postgraduate diploma form one group and the candidates without postgraduate diploma or postgraduate degree form another group and there are two different groups and since they fall in two different groups, the question of violation of Article-14 of the Constitution does not arise. He submitted that in view of the availability of limited number of seats in Postgraduate degree course in medicines, the clause-23 has been introduced. He submitted that if a person who has secured postgraduate diploma in Pediatrics is allowed to seek admission in M.S. Ophthalmology, one candidate may not specialize in pediatrics or another candidate may not specialize in Ophthalmology with the result, the candidate, who had secured postgraduate diploma or postgraduate degree in two specialties, may not be able to specialize in one of the disciplines and the clause has been introduced keeping in mind the public interest so that candidates who have secured diploma in a particular postgraduate faculty should pursue further course in that line only and he cannot deviate from the line and branch off to another speciality. He also submitted that these are all colleges run by the Government and it is open to the Government to prescribe norms for selection and other avenues are not closed and clause-23 will override other clauses. He also submitted that some of the candidates have filed writ petitions after the counselling is over and those candidates have approached the Court belatedly, the writ petitions filed by them should be dismissed on the ground of laches. In support of his submissions, learned Special Government Pleader relied on the following decisions:

1. CHITRALEKHA v. STATE OF MYSORE (AIR 1964 S.C. 1823)
2. D.N.CHANCHALA v. STATE OF MYSORE (AIR 1971 SC 1762)
3. THE DIRECTOR OF MEDICAL EDUCATION & OTHERS v. Dr.V. RAMALAKSHMI (1999 WRIT L.R. 481)
4. STATE OF H.P. v. PADAM DEV (2002) 4 SCC 510
5. Dr.V.GEETHA v. THE STATE OF TAMIL NADU & OTHERS (2003 WRIT L.R. 79)

12. Mr.R.Krishnamoorthy, learned senior counsel, in his reply, submitted that the assumption of the Government that the acquisition of postgraduate diploma would become waste if the candidate goes to other branch for his degree as the knowledge acquired in one field would not become waste. He submitted that the subjects of study are not totally unrelated and what is a qualification has become a disqualification now. He therefore submitted that clause-23 is violative of Article 14 of the Constitution of India. Mr.V.K.Muthusamy and Mr.K.M. Vijayan, learned senior counsel also supported the arguments advanced by Mr.R.Krishnamoorthy, learned senior counsel.

13. I have considered the submissions of Mr.R.Krishnamoorthy, Mr.V.K.Muthusamy and Mr.K.M.Vijayan, learned senior counsel and also Mr. Raja and Mr.Sundar, learned counsel appearing for the petitioners and Mr.Rajasekaran, learned Special Government Pleader (Education) appearing for the respondents. I am of the view, clause-21 and clause-23 are both permissive as well as regulatory. They are permissive in the sense that they permit candidates who have already completed and acquired postgraduate diploma course in anyone of the disciplines to apply for postgraduate degree course in the same discipline and it is regulatory in the sense that it prevents a person from applying to some other discipline for postgraduate degree other than the discipline in which he has acquired postgraduate diploma. Clause-23 is also conscious of the fact that there are limited number of seats available in postgraduate degree courses and there are large number of aspirants and the preference should be given to a candidate who has secured postgraduate diploma to pursue further study in the same direction. Clause-23 is also blind to the ground realities of the situation that there are only few seats available in the postgraduate degree courses and the first option of the candidate will be to seek postgraduate degree in the same discipline in which he has postgraduate diploma and only if the seat in that diploma is not available, he will opt for another postgraduate degree course which will be closely related

to the subject in which he had postgraduate diploma and also to the fact that postgraduate degree courses are more in number than the postgraduate diploma courses.

14. There is no difficulty in accepting the submission of Mr.V.K. Muthusamy, learned senior counsel that all the clauses in the prospectus should be read in a harmonious manner and if clause-21 or clause-23 is read in the manner indicated above, the clause will be consistent with clauses-13,15, 16 and 28 of the prospectus. I am of the view, since the clause-23 also permits a candidate to apply for postgraduate degree in the same discipline in which he has secured postgraduate diploma, the Clause-16(a) providing that the diploma is not a necessary qualification to apply for postgraduate degree course will not be in any way inconsistent with clause-23. Similarly, clause-16(b) which provides that the duration of postgraduate degree course for the diploma candidates who have undergone two year courses shall be two years in the same speciality and three years in other specialties will also not be inconsistent as the candidates who have acquired diploma in one discipline would be required to undergo postgraduate degree course only for a period of two years in the same discipline. As far as the fixation of duration of three years in respect of other speciality is concerned, it must be held that there is some inconsistency between clause-16(b) and clause-23. Similarly, clause-28 enabling candidates to choose any discipline available at the time of counselling would mean that a candidate who has undertaken postgraduate diploma course may choose postgraduate degree course in the same discipline and there would be some inconsistency between clause-23 and clause-28.

15. The candidates who have acquired diploma in one discipline has not challenged Clause-23 prohibiting them to apply for any

other postgraduate diploma course in another discipline. The petitioners who have challenged clauses 21 and 23 are persons who have acquired postgraduate diploma in one discipline seeking admission for postgraduate degree course in another discipline and not in postgraduate diploma course. Hence, it is not necessary to consider the validity of clause-23 with reference to candidates who have acquired postgraduate diploma in one discipline seeking admission in postgraduate diploma in another discipline.

16. There is no difficulty in accepting the submission of the learned Special Government Pleader (Education) that the State which bears the financial burden for running the Government Colleges is entitled to lay down criteria for admission in the colleges run by the State and the State has the power to decide the source from which the admission could be made and the clause providing some restriction is not arbitrary and not unreasonable which has the nexus with the object of the Rules. The decision of the Supreme Court in D.N.CHANCHALA v. STATE OF MYSORE (AIR 1971 SC 1762) and the decision of this Court in Dr. V.GEETHA v. THE STATE OF TAMIL NADU & OTHERS (2003 WRIT L.R. 79) support the case of the respondents to this extent. Equally, in SUGANTHI v. STATE OF TAMIL NADU AND ANOTHER (1984 WRIT L.R. 249), a Division Bench of this Court considered the validity of clause 7(1) of the Prospectus which denied a candidate to apply for admission to M.B.B.S. course, if he had already got admission in other course such as Engineering, Agriculture, Veterinary BDS, B.Pharm, etc., and the Division Bench of this Court, following the decision of the Supreme Court in Chitralekha v. State of Mysore (AIR 1964 SC 1823) held as under:-

" 5. Selection of best candidates for admission to available seats in different category in professional colleges with an eye to restrict the number on some reasonable basis since the colleges cannot hold beyond a particular number of students, is a power given to the authorities after evolving certain policies for the selection. One such policy in present case is to deny admission to those students who have already got into the professional colleges mentioned in clause 7(1) of the prospectus and had undergone six months course (first semester). Such a policy, in our opinion, is reasonable and has a nexus to the object sought to be achieved, viz., manning all the colleges run by the Government efficiently and in distributing the seats available equitably. If a candidate studying in an engineering college, which course also got only a limited number of seats and for which also there is competition, and after writing the first semester, is allowed to compete for a seat in the medical college, it will definitely deprive the candidates who have come in for the first time for selection to the medical course. A candidate who has already secured a seat in a professional college stands on a different category and that candidate's chances of becoming a graduate in that professional college is a fait accompli. Considering the limited number of seats in various professional colleges, the Government thought it fit to lay down a policy as mentioned in clause 7(1) of the prospectus. Further, if a candidate who has got a seat in the engineering college deserts it, for the admission which he gets in another professional college such as medical college, the seat in that particular engineering college will go as a waste. The wisdom of the Government thought it necessary to bring in such a policy, which has a nexus in our opinion for the object to be achieved. By this policy there will be equitable distribution of limited seats available in all

the professional colleges manned by the State after determining the merit of the candidates eligible to appear for such a selection."

17. There can be no difficulty in holding that the Government which runs professional colleges has the power to frame a scheme and it has the power to restrict admission on reasonable terms and regulate the admission and distribute the seats equitably to those who seek admission. The decision of the Division bench of this Court in *THE DIRECTOR OF MEDICAL EDUCATION & OTHERS v. Dr. V. RAMALAKSHMI* (1999 WRIT L.R.481) also supports the case of the respondents as this Court has held that the decision of the Government partakes a decision of policy depending upon exigencies of situation and having regard to the limited number of seats available and the financial commitment involved for the State, it is open to the Government to regulate admission of candidates to the courses in higher studies.

18. The decision of the Supreme Court in *STATE OF M.P. v. GOPAL D. TIRTHANI* (2003) 9 ILD 13 (SC) also recognises that it is open to the State to regulate admission provided the regulation made is not arbitrary or unreasonable. I am unable to accept the submission of Mr.K. M.Vijayan, learned senior counsel that after the Medical Council of India Post Graduate Medical Education Regulations, 2000 came into force, the state Government has no power to prescribe any condition for admission. There can be no doubt that the regulations framed by the Medical Council of India should be complied with, but, at the same time, the Supreme Court in number of cases has upheld the power of the State Government to identify the source of admission for the candidates seeking admission to the postgraduate medical courses and the decision of the Supreme Court in *STATE OF MP v. GOPAL D. TIRTHANI* (2003) 9 ILD 13 (SC) is relevant as the Supreme Court has taken note of the Medical Council of India Post Graduate Medical Regulations and upheld the quota of seats fixed for inservice candidates in medical postgraduate admission in the State of Madhya Pradesh. In other words, the source of the power of the State Government can be traced to the decision of the Supreme Court, cited supra. I am of the view, while the State Government should comply with the Medical Council of India Postgraduate Medical Regulations, it can also frame its own regulations for admission to Postgraduate medical courses which are not in any way inconsistent with the Medical Council of India Postgraduate Medical Regulations provided the regulation has a reasonable nexus to the object of the Rules. Therefore the submission of Mr.K.M.Vijayan, learned senior counsel that clause-23 is violative of the provisions of Medical Council of India Postgraduate Medical Regulations and hence, it should be struck down is not acceptable, as, in my view, clause-23 is in no way conflict with the Medical Council of India Postgraduate Medical Regulations.

19. The next question that arises is whether clause-21 or clause-23 is violative of Article 14 of the Constitution of India. It is well settled by several decisions of the Supreme Court that to withstand the test of reasonable classification within the meaning of Article-14 of the Constitution of India, the classification must satisfy the twin test, namely, (i) it must be founded on an intelligible differentia which distinguishes persons or things placed in a group from those left out or placed not in the group, and (ii) the differentia must have a rational relation with the object

sought to be achieved. In *AIIMS STUDENTS' UNION v. AIIMS* (2002) 1 SCC 428) Mr.R.C.Lahoti,J. speaking for the Bench held that the merit must be test when choosing the best. The rule of equal chance for equal marks is another basic rule. Similarly, equality of opportunity for every person in the country is a constitutional guarantee. A candidate who gets more marks than another is entitled to preference for admission and this proposition has greater importance for the higher levels of education like postgraduate courses and the higher the level of the speciality, the lesser the role of reservation.

20. It is equally true that the Supreme Court in *STATE OF H.P. v. PADAM DEV* (2002) 4 SCC 510) has held that the classification between the candidates must be distinct and clearly defined as regards the eligibility criteria of candidates, the choice of candidates, the training and post-training assistance and most importantly, the objectives of the training. It is no doubt true that the Supreme Court in *ASHUTOSH GUPTA v. STATE OF RAJASTHAN* (2002)4 SCC 34) has held that the concept of equality before law does not involve the idea of absolute equality amongst all which may be a physical impossibility and all that Article 14 guarantees is the similarity of treatment and not identical treatment and the protection of equal laws does not mean that all laws must be uniform and equality before the law means that among equals the law should be equal and the law should be equally administered and that the likes should be treated alike and equality before the law does not mean that things which are different shall be treated as though they were the same and a legislature which has to deal with diverse problems arising out of an infinite variety of human relations must of necessity, have the power of making special laws to attain particular objects and for that purpose it must have wider powers of selection or classification of persons and things upon which such laws are to operate and mere differentiation or inequality of treatment does not "per se" amount to discrimination within the inhibition of the equal protection clause and the State has always the power to make classification on a basis of rational distinctions relevant to the particular subject to be dealt with.

21. As far as the decision of this Court in *Dr.V.GEETHA v. THE STATE OF TAMIL NADU & OTHERS* (2003 WRIT L.R. 79) is concerned, the decision, in my opinion, has no application as in that case the petitioner had already acquired the qualification of P.G. Degree, namely, M.S. (General Surgery) and by virtue of the relevant clauses of the prospectus she was made ineligible to apply for and to join another P.G. Degree or Diploma course. In that situation, this Court held that it is not open to the petitioner to put forward the plea of discrimination as the petitioner is not identically placed or on par with any other candidate with a qualification of Bachelor of Medicine and Surgery. This Court also held that having acquired a P.G. degree Qualification, the petitioner seeks to acquire another P.G. Degree in another speciality and it would result in undue advantage being conferred on the petitioner while depriving a valuable opportunity to other graduates in Medicine. This decision, in my opinion, has no application at all as the petitioner in that case had already acquired postgraduate degree in one discipline and if she was allowed to acquire another postgraduate degree in some other speciality, then, it would deprive the chances of another candidate with no postgraduate degree qualification to acquire a P.G. Degree and in

that context, this Court held that there is no violation of Article 14 of the Constitution of India. I am of the view that it is not permissible to equate a person who has already acquired a postgraduate degree with a person who has not acquired a postgraduate degree or a person who has secured only a postgraduate diploma, and it is well settled that a degree and a diploma in a particular discipline do not stand on the same footing as there are essential differences between the acquisition of a degree and the acquisition of a diploma in a particular discipline and the candidate with a postgraduate diploma is required to undergo two more or three more years of intensive study, as the case may be, to acquire the P.G. degree and become a specialist in that particular discipline.

22. As far as the decision of this Court in THE DIRECTOR OF MEDICAL EDUCATION, & OTHERS v. Dr. V.RAMALAKSHMI (1999 WRIT LR.481) is concerned, the decision also has no application as the clause dealt with by the Division Bench was one relating to service candidates and if any disciplinary proceeding was pending against them, the clause prohibited the service candidates from sending in application. This Court, while upholding the clause on the ground that it is not violative of Article-14 of the Constitution of India, held that it is open to the Government to regulate admission of candidates who were already in service to such courses in higher studies, of only those who have no cloud around them and who have no mixed or adverse record of service.

23. As far as the counter affidavit filed by the respondents is concerned, there are 23 courses in postgraduate degree and 17 courses in postgraduate diploma available and the total number of seats in postgraduate degree are 416 and postgraduate diploma are 476. Though there are 23 courses in postgraduate degree, there are only 12 specialities for which postgraduate diploma courses are available preceding the degree courses. In the counter affidavit it is also stated that there are 300 Government Hospitals situate in 28 Districts of Tamil Nadu in which various speciality departments are available. It is also stated that the policy of the Government is to appoint Medical Officers with minimum Postgraduate diploma qualification in the hospitals so that the people from the rural areas need not have to travel to the referral hospitals attached with medical colleges.

24. The policy of the Government seems to be that if a candidate with DCH qualification which is a postgraduate diploma in child health subsequently takes postgraduate degree course in E.N.T. which is entirely a different speciality, his training in the previous speciality will not be utilised either for the public or for the Government. The stand of the Government shows that it equates a postgraduate degree course with a postgraduate diploma course and an additional qualification by way of a diploma is treated as a disqualification for pursuing higher degree course. As already seen, there are only 12 specialities in the postgraduate diploma course for which there are corresponding specialities in postgraduate degree course. It is also possible to visualise the case of a person who has obtained a postgraduate diploma in child health, viz., DCH and if he is unable to get a seat in M.D. Pediatrics due to limited number of seats available in

that particular faculty and if he pursues his studies by choosing M.D. (General Medicine), it cannot be stated that the knowledge acquired by him by way of diploma in Child Health would become useless and irrelevant, when he practises as M.D. (General Medicine), particularly in the case of medical field. It cannot also be stated that the diploma in Child Health is totally unrelated to the M.D. (General Medicine) and with the higher qualification in M.D. (General Medicine) as well as the qualification of diploma in Child Health, he may be able to attend more efficiently the patients in the rural areas both in the case of child health and in general medicine. The disqualification or the restriction in clause-21 or clause-23 of the prospectus not to permit a candidate from applying to any other speciality is also not consonance with clause-16(b) or clause-28 of the prospectus. By virtue of the operation of restriction found in clause-23, the right of candidates to choose any of the disciplines available at the time of counselling is lost and at the time of counselling, if a candidate has acquired a postgraduate diploma in Child health, he would not normally opt for M.D. (General Medicine) and if he opts for the same, then, the duration of the postgraduate degree course would be three years. Therefore the first option in such cases would be to opt for M.D. (Pediatrics) and if the seats are not available in that discipline, the candidate may choose any other discipline. Hence, clause-23 is against the provisions of clause 16(b) or clause-28 and clause-23 takes away the right of a candidate to choose any of the subjects when he seeks to pursue a different speciality. Therefore, the submissions of Mr.R.Krishnamoorthy, Mr.V.K.Muthusamy and Mr.K.M.Vijayan, learned senior counsel are well-founded in this respect that all the clauses should be read harmoniously and they should not be read in such a manner that one clause is violative of another clause.

25. It is well settled that the Government has the power to regulate in the matter of admission of candidates, it does not mean that the regulation of admission of candidates should be unreasonable and there must be nexus between the clause in question and the object of the Rules. It is evident that all the candidates are treated equally at the time of common entrance examination, but, at the time of selection, they are not treated alike. The candidates coming under clause-23 are denied admission not on the ground of any merit, but only on the ground that they have secured postgraduate diploma in some other discipline. The effect of clause-23 is that a person with lesser merit is preferred, but a candidate with higher merit is denied admission on the score that he has secured a postgraduate diploma in some other faculty. In other words, by operation of clause-23 of the prospectus, there will be a serious dent to the merit based selection, particularly in postgraduate degree level.

26. The Andhra Pradesh High Court in V.SHAMSUNDER RAO v. STATE (AIR 1982 A.P. 405) has held that it is preposterous to deny admission to a candidate who by virtue of his merit is entitled to admission to M.S. (General Surgery) on the mere ground that he had earlier qualified for admitted to the Postgraduate Diploma in Child Health to which he was admission and registered only because he could not earlier qualify for M.S. (General Surgery). The Court has also held that the rule making authority did not intend the applicants who had not already secured the postgraduate diploma or

degree to be denied admission in a particular subject merely because he had registered himself in a particular subject for the postgraduate diploma course. It is also relevant to notice here that Madhava Reddy, Ag.C.J., speaking for the Bench held that any training a candidate may have undergone would not go waste if he is admitted to M.S. (General Surgery). The basis behind the introduction of clause-23 is that since the candidate had undergone a postgraduate diploma course in one faculty and if he is allowed to undertake postgraduate degree course in another faculty, the knowledge acquired by him in the diploma course would become waste. In my view, there is no basis for the said assumption and it also has no relevance when the candidate is selected on the basis of merit and merit alone.

27. The Punjab and Haryana High Court also considered a similar question in *TEJINDER SINGH SIDHU v. STATE* (AIR 1992 P & H. 119) where a Division Bench of the Punjab and Haryana high Court considered the validity of the clause contained in the prospectus which provided that doctors who have had postgraduate qualifications whether degree or diploma should be selected only for their respective speciality in which they have done degree or diploma, and held that it is violative of Article-14 of the Constitution of India and it is void as the securing of a higher qualification had the effect of making a candidate ineligible whereas in fact, it ought to have been considered as a merit. The Punjab and Haryana High Court followed an earlier judgment of a Bench of that Court reported in *State of Punjab v. Dr. Harnek Singh Medical Officer* (1989 (3) SLR 802) wherein it was observed as under:-

" A person with higher qualifications in the speciality other than the one in which he is seeking appointment is ineligible whereas the other members of the service having lower qualifications are still eligible for appointment. It is an unreasonable discrimination. The members of the service having higher qualifications have been placed at an disadvantageous position qua the other members having lower qualifications. The condition is violative of Art.14 of the Constitution."

28. I have already referred to the unreported decision of Mr.S.S. Subramani,J. in W.P.No.1741 of 1997, etc. batch, dated 9.9.1997 where the learned Judge considered the decision of the Supreme Court in *Dr. DINESH KUMAR v.MOTILAL NEHRU MEDICAL COLLEGE* (1987) 4 SCC 459) where a direction was given by the Supreme Court to evolve a common pattern for admission to postgraduate medical courses. Learned Judge also noticed the decisions of Andhra Pradesh High Court and Punjab and Haryana High Court, cited supra, and held that so far as basic qualification for eligibility for admission to postgraduate medical courses are concerned, the respondents should not have treated the petitioners separately and the principle underlying Article-14 of the Constitution prohibits the same. Learned Judge accepted the arguments that M.B.B.S. is the basic qualification for eligibility for admission to the postgraduate medical courses and basic qualification alone should be considered and merely because the candidates have obtained a diploma in some discipline, that should not be taken as a disqualification. I am of the view that the judgment of Mr.S.S.Subramani,J. would equally apply in considering the validity of clause-23 of the prospectus in question.

29. Though the unreported decision of Mr.S.S.Subramani,J. in W.P. No.1741 of 1997, etc. batch was sought to be distinguished on the ground that the clause considered by the learned Judge is different, I find that the ratio laid down by the learned Judge is that for admission to postgraduate degree course, the basic qualification should be considered and acquisition of diploma in some other discipline is not to be regarded as a disqualification.

30. There is also an additional reason. Clause-59 of the prospectus provides that out of the seats sanctioned for postgraduate diploma/degree and M.D.S. Courses, 25% of seats are reserved for allotment to All India candidates on the basis of All India selection. In so far as the candidates selected under All India selection are concerned, there is no prohibition and it is open to those candidates to pursue any discipline, though they might have secured postgraduate diploma in another discipline. Though the source of admission may be different, I am of the view that the prohibition against admission to postgraduate degree course in some other discipline for the same candidate is violative of Article-14 of the Constitution of India. As already observed by me, the merit is sacrificed by way of the restriction found in clause-23 and the restriction goes against the object of the Rule and it has no nexus or link with the object of the Rule providing for merit based selection. The submission of learned Special Government Pleader (Education) that the petitioners have not given the details of discrimination is unsustainable as senior counsel appearing for the petitioners have clearly demonstrated before the Court the unequal treatment that would be meted out to the petitioners by the operation of clause-23 and how the merit will be a casualty by the process of selection adopted by virtue of clause-23 of the prospectus.

31. As far as the decision of a Full Bench of this Court in MURALI,R. Dr. v. Dr.R.KAMALAKKANNAN (1999(III) CTC 675) relied upon by the learned Special Government Pleader is concerned, the decision has hardly any application. The Bench noticed the decision in Dr.Preeti Srivastava v. State of Madhya Pradesh (1999 (4) Scale 579) where the Supreme Court also held that in super speciality cases merit alone is to be considered. It was also found by the Bench of this Court that from the merit list in both service and non-service candidates, the merit was not the casualty and only on the basis of merit, the classification was made. However, in the present case, the merit is the casualty as a person in lower rank in the competitive examination will bypass a candidate who has secured higher mark in the same examination.

32. Learned Special Government Pleader also submitted that in some cases, the petitioners have approached the Court after the counselling is over and therefore, they are not eligible and their case should be considered on a different footing and their petitions should be dismissed on the ground of laches. I find that Mr.S.S.Subramani,J. in the unreported decision in W.P.No.1741 of 1997, etc. batch, has also considered the question of acquiescence in a detailed manner and held that where there is violation of Article 14 of the Constitution, the question of acquiescence does not arise. It is relevant to notice that in the case before Mr.S.S.Subramani,J., some of the candidates approached the Court after the counselling was over and the

learned Judge held that the mere fact that the petitioners did not participate in the counselling would not debar them from approaching the court as there was misinterpretation given by the respondents which was challenged in the writ petitions. I respectfully follow the decision of Mr.S.S.Subramani,J. and hold that where there is a question of violation of Article-14 of the Constitution of India, there cannot be any question of estoppel or waiver in such cases. Moreover, I find that the persons who have come to the Court are wait-list candidates and out of the petitioners, four are entitled for admission and other petitioners are still in the wait-list.

33. I therefore hold that clause-21 or 23 which prohibits a candidate who has already completed or acquired a postgraduate diploma in one discipline from applying for a postgraduate degree course in another discipline is violative of Article-14 of the Constitution of India, and the result is that all the writ petitions stand allowed to the above extent. No costs. Connected WPMPs. are closed. The impleading petition is ordered.

Index: Yes

Website: Yes

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To

1. The Secretary to Govt.,
Health and Family Welfare Dept.,
State of Tamil Nadu,
Fort St.George,
Chennai-9.

2. The Director of Medical Education,
Kilpauk, Chennai.

3. The Secretary,
Postgraduate Degree/Diploma Selection
Committee, Director of Medical Education,
162, E.V.R.Periyar High Road,
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